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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 TONY SHAW,

Case. No.: 2:18-cv-00515-JCM-PAL

9 Plaintiff,

10 vs.

[PROPOSED] STIPULATED
PROTECTIVE ORDER

11
12 NP SANTA FE, LLC DBA SANTA FE
13 STATION HOTEL & CASINO, a Nevada
14 Limited Liability Company; STATION
15 CASINOS, LLC, a Nevada Limited Liability
16 Company; and RED ROCK RESORTS,
17 INC., a Delaware corporation,

Defendants.

18 The parties to this action, by their respective counsel, having agreed to the
19 following, and for good cause shown pursuant to Fed. R. Civ. P 26(c)(1), IT IS HEREBY
20 ORDERED as follows:

21 **1. PURPOSES AND LIMITATIONS.**

22 Disclosure and discovery activity in this action may involve production of
23 confidential, proprietary, or private information for which special protection from public
24 disclosure may be warranted pursuant to Rule 26(c)(1) of the Federal Rules of Civil
25 Procedure. The parties acknowledge that this Order does not confer blanket protections on
26 all disclosures or responses to discovery and that the protection it affords extends only to
27 the limited information or items that are entitled under law to treatment as confidential.

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1 **2. SCOPE.**

2 All documents produced in the course of discovery, all responses to discovery
 3 requests, and all deposition testimony and exhibits and any other materials which may be
 4 subject to discovery (hereinafter collectively “Discovery Material”) shall be subject to this
 5 stipulated protective order concerning confidential information as set forth below. Any
 6 party, or any third party who produces documents in this litigation, may designate
 7 documents as CONFIDENTIAL but only after review of the documents by an attorney who
 8 has, in good faith, determined that the documents contain “Confidential Information,” as
 9 defined below, and pursuant to the procedure set forth below.

10 **3. CONFIDENTIAL INFORMATION.**

11 “Confidential Information” shall mean information meriting special protection
 12 under the Federal Rules of Civil Procedure and applicable case law. Confidential
 13 Information does not include information that: (a) is in the public domain at the time of
 14 disclosure; (b) becomes part of the public domain through no fault of the Receiving Party;
 15 (c) the Receiving Party can show was in its rightful and lawful possession at the time of
 16 disclosure; or (d) the Receiving Party lawfully receives from a Non-party later without
 17 restriction as to disclosure.

18 **4. OTHER DEFINITIONS.**

19 Party: any party to this action, including all of its officers, directors, agents, and
 20 attorney(s) of record for a Party in this action (including their associates, paralegals, and
 21 support/ clerical staff).

22 Non-party: any individual, corporation, association, or natural person or entity
 23 other than a party.

24 Protected Material: any Discovery Material containing Confidential Information
 25 that is designated by a Party or Non-party as “CONFIDENTIAL,” unless the Receiving
 26 Party challenges the confidentiality designation and (a) the Court decides such material is
 27 not entitled to protection as confidential; (b) the Designating Party fails to apply to the Court
 28 for an order designating the material confidential within the time period specified below; or

1 (c) the Designating Party withdraws its confidentiality designation in writing.

2 Producing Party: a Party or Non-party that produces Discovery Material in this
3 action.

4 Receiving Party: a Party that receives Discovery Material from a Producing Party.

5 Designating Party: a Party or Non-party that designates Discovery Material as
6 “CONFIDENTIAL”. The Party or Non-party designating information or items as Protected
7 Material bears the burden of establishing good cause for the confidentiality of all such items.

8 Challenging Party: a party that elects to initiate a challenge to a Designating
9 Party’s confidentiality designation.

10 **5. FORM AND TIMING OF DESIGNATION.**

11 Protected Material shall be so designated by the Producing Party by placing or
12 affixing the word “CONFIDENTIAL” on the document in a manner which will not interfere
13 with the legibility of the document and which will permit complete removal of the
14 “CONFIDENTIAL” designation. Documents shall be designated “CONFIDENTIAL” prior
15 to, or contemporaneously with, the production or disclosure of the documents.

16 A Designating Party must exercise restraint and make good faith efforts to limit
17 CONFIDENTIAL designations to specific materials that qualify for protection under the
18 appropriate standard. Further, a Designating Party must use good faith efforts to designate
19 for protection only those parts of material, documents, items, or communications that
20 qualify – so that other portions of the materials, documents, items, or communications for
21 which protection is not warranted are not swept unjustifiably within the ambit of this Order.
22 If only a portion or portions of materials on a page or within a document merit protection, a
23 Producing Party must so indicate by making appropriate markings in the margins but not
24 over text or by redacting protected portions.

25 A Confidentiality Log must accompany any production of Protected Material that
26 includes the Bates numbers of the documents designated (or the portions thereof) as
27 “Confidential” and the basis for doing so. A certification by the reviewing attorney shall be
28 made concurrently with the disclosure of the document using the form attached hereto as

1 Exhibit A which shall be executed subject to the standards of Rule 11 of the Federal Rules
2 of Civil Procedure, and shall be accompanied by a Confidentiality Log in the form included
3 at Exhibit A. If an unrepresented Non-party is a Producing Party and desires to designate
4 documents as Confidential as a Designating Party, a certification need not be executed but
5 a Confidentiality Log of all confidential designations still must be provided.

6 A Producing Party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has
8 indicated which material it would like copied and produced. During the inspection and
9 before the designation, all of the material made available for inspection shall be deemed
10 “Confidential.” After the inspecting Party has identified the documents it wants copied and
11 produced, the Producing Party must determine which documents, or portions thereof,
12 qualify for protection under this Order, and, before producing the specified documents, the
13 Producing Party must affix the appropriate legend on each page that contains Protected
14 Material. If only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriated markings in the margins or by redacting protected portions).

17 Portions of depositions shall be designated CONFIDENTIAL when the deposition
18 is taken or within fourteen (14) business days after receipt of the transcript, if feasible. Such
19 designation shall be specific as to the portions to be protected. A Designating Party must
20 exercise restraint and make good faith efforts to limit “CONFIDENTIAL” designations to
21 specific materials that qualify for protection under the appropriate standards.

22 Inadvertent or unintentional production of Protected Material without prior
23 designation as “CONFIDENTIAL” shall not be deemed a waiver, in whole or in part, of the
24 right to designate documents as Protected Material as otherwise allowed by this Order.
25 Further, a Party may assert that disclosures or discovery material produced by another Party
26 constitute Protected Material by informing the opposing Party by following the procedures
27 set forth herein for a Designated Party.

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1 **6. PROTECTION OF PROTECTED MATERIAL.**

2 **a. General Protections.** Protected Material shall not be used or disclosed by the
 3 parties or counsel for the parties or any other persons identified below (¶ 6.b.) for any
 4 purposes whatsoever other than preparing for and conducting litigation in the above-entitled
 5 action (including any appeal).

6 **b. Qualified Receiving Parties and Limited Third Party Disclosures.** Protected
 7 Material shall be held in confidence by each qualified Receiving Party to whom it is
 8 disclosed, shall be used only for purposes of this action, and shall not be disclosed to any
 9 person who is not a qualified recipient. All Protected Material shall be carefully maintained
 10 so as to preclude access by persons who are not qualified Receiving Parties.

11 Subject to these requirements, in addition to Parties and the Court, the following
 12 categories of persons may be allowed to review Protected Material pursuant to this Order
 13 after executing an acknowledgment (in the form set forth at Exhibit B hereto), that he or she
 14 has read and understands the terms of this Order and is bound by it:

- 15 (1) Any officers, directors, or designated employees of a Party deemed
 necessary by counsel of record in this action to aid in the
 prosecution, defense, or settlement of this action;
- 16 (2) Professional outside vendors for attorneys of record (such as
 copying services and translators and interpreters);
- 17 (3) Court reporters, deposition notaries and staff;
- 18 (4) The author of any document designated as CONFIDENTIAL or the
 original source of Confidential Information contained therein;
- 19 (5) Persons other than legal counsel who have been retained or
 specially employed by a party as an expert witness for purposes of
 this lawsuit or to perform investigative work or fact research;
- 20 (6) Deponents during the course of their depositions;
- 21 (7) Counsel for issuers of insurance policies under which any issuer
 may be liable to satisfy part or all of a judgment that may be entered

in these proceedings or indemnify or reimburse payments or costs associated with these proceedings;

(8) Any private mediator or arbitrator appointed by the Court or selected by mutual agreement of the parties and the mediator or arbitrator's secretarial and clerical personnel;

(9) Any other person as to whom the Producing Party has consented to disclosure in advance and in writing, on notice to each Party hereto.

9 **c. Control of Documents.** Counsel for Parties shall take reasonable efforts to
10 prevent unauthorized disclosure of Protected Material pursuant to the terms of this Order.
11 No copies of Protected Material shall be made except by or on behalf of attorneys of record,
12 in-house counsel or the parties in this action.

13 **d. Copies.** Any person making copies of Protected Material shall maintain all
14 copies within their possession or the possession of those entitled to access to such
15 information under the Protective Order. All copies shall be immediately affixed with the
16 designation “CONFIDENTIAL” if the word does not already appear on the copy. All such
17 copies shall be afforded the full protection of this Order.

7. UNAUTHORIZED DISCLOSURE.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosure(s), (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosure(s) were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound by Stipulated Protective Order” (Exhibit A).

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1 **8. FILING PROTECTED MATERIAL**

2 Subject to the Federal Rules of Evidence, Protected Material may be filed with the
 3 Court or offered in evidence or hearing or trial of this case. This Order does not seal court
 4 records in this case or apply to disclosure of Protected Material at trial. Further, the parties
 5 understand that documents may be filed under seal only with the permission of the Court
 6 after proper motion. Further, the fact that documents have been designated as
 7 “CONFIDENTIAL” shall not be admissible evidence that the documents in fact contain
 8 information entitled to protection from disclosure under the law.

9 However, in the event a Party seeks to file Protected Materials with the Court,
 10 those documents shall be filed under seal pursuant to Rule 10-5 of the Local Rules of
 11 Practice for the U.S. District Court of Nevada. The Party filing such Protected Materials
 12 may assert in the accompanying motion any reasons why the Protected Materials should
 13 not, in fact, be kept under seal and the Designating Party, who must be properly noticed,
 14 may likewise file a motion asserting its position that the Protected Material merits protection
 15 under Rule 26(c) of the Federal Rules of Civil Procedure and attaching a declaration
 16 supporting the assertion that the designated material meets the applicable standard. In such
 17 instances, absent extraordinary circumstances making prior consultation impractical or
 18 inappropriate, the Party seeking to submit the Protected Materials to the Court shall first
 19 consult with counsel for the Designating Party.

20 Further, the Parties recognize the presumption of public access inherent in judicial
 21 records and that a Protective Order does not establish that documents meet the “standard for
 22 sealing set forth in Rule 10-5 of the Local Rules of Practice for the U.S. District Court of
 23 Nevada and the Ninth Circuit’s decisions in *Kamakana v. City and County of Honolulu*, 447
 24 F.3d 1172 (9th Cir. 2006) and *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092,
 25 1097 (9th Cir. 2016), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S.
 26 Ct. 38 (2016). “A party seeking to seal a judicial record then bears the burden of overcoming
 27 this strong presumption by meeting the ‘compelling reasons’ standard.” *Kamakana*, 447
 28 F.3d at 1178. The only exception to this rule is that only good cause need be established

1 “for sealed materials attached to a discovery motion unrelated to the merits of a case.”
 2 *Chrysler Group*, 809 F. 3d at 1097 (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors*
 3 *Corp.*, 307 F.3d 1206, 1213–14 (9th Cir.2002).). Further, the Court should make an
 4 independent determination regarding whether documents merits sealed status, and thus
 5 expressly reserves the right to do. *Kamakana*, 447 F.3d at 1186-87.

6 **9. CHALLENGES TO PROTECTED MATERIAL.**

7 Any designation of Protected Material is subject to challenge. The following
 8 procedures shall apply to any such challenge:

9 **a. Burden.** The burden of proving the necessity of a “CONFIDENTIAL”
 10 designation remains with the party asserting confidentiality.

11 **b. Notice; Opportunity to Challenge.** A party who contends that Protected
 12 Material is not entitled to confidential treatment shall give written notice to the party who
 13 affixed the “CONFIDENTIAL” designation of the specific basis for the challenge. The party
 14 who so designated the documents shall have ten (10) days from service of the written notice
 15 to determine if the dispute can be resolved without judicial intervention and, if not, to move
 16 for an Order confirming the “CONFIDENTIAL” designation, and the status as Protected
 17 Material.

18 **c. Treatment as Protected Material until Order or Withdrawal.**
 19 Notwithstanding any challenge to the designation of documents as such, all material
 20 previously designated “CONFIDENTIAL” shall continue to be treated as Protected Material
 21 subject to the full protections of this Order until one of the following occurs: (1) the Party
 22 who claims that the documents are Protected Material withdraws such designation in
 23 writing; (2) the Party who claims that the documents are confidential fails to move timely
 24 for an Order designating the documents as confidential as set forth in paragraph 9.b. above;
 25 or (3) the Court rules that the documents are not Protected Material and/or should no longer
 26 be designated as “CONFIDENTIAL.”

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1 **d. No Waiver.** Challenges to the confidentiality of documents may be made at any
2 time and are not waived by the failure to raise the challenge at the time of initial disclosure
3 or designation.

4 **10. DURATION; CONCLUSION OF LITIGATION.**

5 All provisions of this Order restricting the use of Protected Material shall continue
6 to be binding after the conclusion of the litigation unless otherwise agreed or ordered.
7 However, the dismissal of this action will terminate the jurisdiction of this Court, including
8 over this Order.

9 Within thirty (30) days of the final termination of in the above-entitled action,
10 which would be either a final judgment on all claims or stipulation and order for dismissal
11 with prejudice, all documents and information designated as CONFIDENTIAL by a
12 Designating Party and which has not been challenged, including any copies, or documents
13 containing information taken therefrom, shall be returned to the Designating Party. In the
14 alternative, within thirty (30) days of the final termination of this case, which would be
15 either a final judgment on all claims or stipulation and order for dismissal with prejudice,
16 all such documents, including copies, may be shredded or disposed of in a manner to ensure
17 the destruction thereof and a declaration certifying such destruction or disposal provided to
18 the Designating Party. To the extent a party has designated portions of a deposition
19 transcript as CONFIDENTIAL, the non-designating party is under no obligation or duty to
20 shred or dispose of the deposition transcript, however, the CONFIDENTIAL designation
21 will remain.

22 **11. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
23 **PRODUCED IN OTHER LITIGATION.**

24 If a Party is served with a subpoena or an order issued in other litigation that would
25 compel disclosure of Protected Material designated by another Party or Non-party, the Party
26 must so notify the Designating Party, in writing (by e-mail or fax, if possible) within three
27 (3) court days after receiving the subpoena or order. Such notification must include a copy
28 of the subpoena or court order.

1 **12. ORDER SUBJECT TO MODIFICATION.**

2 This Order shall be subject to modification on motion of any Party or any other
 3 person who may show an adequate interest in in the above-entitled action to intervene for
 4 purposes of addressing the scope and terms of this Order. The Order shall not, however, be
 5 modified until the Parties shall have been given notice and an opportunity to be heard on
 6 the proposed modification.

7 **13. NO JUDICIAL DETERMINATION.**

8 This Order is entered based on the representations and agreements of the Parties
 9 and for the purpose of facilitating discovery. Nothing herein shall be construed or presented
 10 as a judicial determination that any specific document or item of information designated as
 11 CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the Federal Rules
 12 of Civil Procedure or otherwise until such time as a document-specific ruling shall have
 13 been made.

14 **14. MISCELLANEOUS.**

15 **a. Public Health and Safety.** Nothing in this Order is intended to prevent any
 16 Party from raising with the Court any concern that the non-disclosure of certain Protected
 17 Material may have a possible adverse effect upon the general public health or safety, or the
 18 administration or operation of government or public office.

19 **b. Right to Further Relief.** Nothing in this Order abridges the right of any person
 20 to seek its modification by the Court in the future.

21 **c. Right to Assert Other Objections.** By stipulating to the entry of this Order, no
 22 Party waives any right it otherwise would have to object to disclosing or producing any
 23 information or item on any ground not addressed in this Order. Similarly, no Party waives
 24 any right to object on any ground to use in evidence of any of the material covered by this
 25 Protective Order.

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1 **15. PERSONS BOUND UPON ENTRY OF ORDER.**

2 This Order shall take effect when entered and shall be immediately binding upon
3 the Parties (as defined herein).

4 IT IS SO STIPULATED.

5 DATED this 3rd day of December, 2018.

6

7 DATED this 3rd day of December, 2018.

8 /s/ Alina M. Shell

9 Margaret A. McLetchie, NBN 10931
10 Alina M. Shell, NBN 11711
MCLETCHIE LAW
11 701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101

12 *Attorneys for Plaintiff*

13 /s/ David B. Farkas, Esq.

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SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

16 *Attorneys for Defendants*

17 **ORDER**

18 IT IS SO ORDERED.

19 Dated this 17th day of December, 2018.

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U.S. DISTRICT MAGISTRATE JUDGE

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2 **EXHIBIT A**
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1 **CERTIFICATION BY COUNSEL OF DESIGNATION OF INFORMATION AS**
2 **CONFIDENTIAL**

3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 TONY SHAW,

6 Plaintiff,

7 vs.

8 NP SANTA FE, LLC DBA SANTA FE
9 STATION HOTEL & CASINO, a Nevada
10 Limited Liability Company; STATION
11 CASINOS, LLC, a Nevada Limited
12 Liability Company; and RED ROCK
13 RESORTS, INC., a Delaware corporation,

14 Defendants.

15 Case No.: 2:18-cv-00515-JCM-PAL

16 **CERTIFICATION BY**
17 **COUNSEL OF DESIGNATION**
18 **OF INFORMATION AS**
19 **CONFIDENTIAL**

20 Documents produced herewith, whose Bates numbers have been listed on the
21 attached Confidentiality Log, have been marked as CONFIDENTIAL subject to the
22 Confidentiality Order entered in this action which Order is dated _____, 2018.

23 By signing below, I am certifying that I have personally reviewed the marked
24 documents and believe, based on that review that they are properly subject to protection
25 under the terms of Paragraph 3 of the Confidentiality Order.

26 I am a member of the Bar of the United States District Court for the District of
27 Nevada. My Nevada Bar number is _____.

28 _____
Date

Signature of Counsel

Printed Name of Counsel

LOG OF CONFIDENTIAL DESIGNATIONS

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EXHIBIT B

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ACKNOWLEDGMENT OF UNDERSTANDING AND AGREEMENT TO BE BOUND

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TONY SHAW,

Case No.: 2:18-cv-00515-JCM-PAL

Plaintiff,

VS.

**ACKNOWLEDGMENT OF
UNDERSTANDING
AND AGREEMENT TO BE
BOUND**

NP SANTA FE, LLC DBA SANTA FE STATION HOTEL & CASINO, a Nevada Limited Liability Company; STATION CASINOS, LLC, a Nevada Limited Liability Company; and RED ROCK RESORTS, INC., a Delaware corporation,

Defendants.

The undersigned hereby acknowledges that he or she has read the Confidentiality Order dated _____, 2018, in the above-captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada relating to the Confidentiality Order during the pendency of the above-entitled action, the undersigned further agrees to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination in this action, and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such Protected Material to any person, firm, entity, or concern.

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1 The undersigned acknowledges that violation of the Stipulated Confidentiality
2 Order may result in penalties for contempt of court.

3 Name: _____
4 Job Title: _____
5 Employer: _____
6 Business Address: _____
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